

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

LEON JOHNSON,
Plaintiff,

v.

F. DUTY, *et al.*,
Defendants.

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Civil Action No. 7:21-cv-000635

By: Elizabeth K. Dillon
United States District Judge

ORDER

By order entered March 11, 2022, the court dismissed this action without prejudice after *pro se* plaintiff Leon Johnson failed to timely file his prison trust fund account statements as directed. Three days after entry of that order, the Clerk received from Johnson the prisoner trust account report. (Dkt. No. 20.) Approximately one month later, Johnson filed a motion for reconsideration, in which he explains that he had timely requested the prison account statements, but they were not sent by his prison before the deadline. He provides some documentation to support his claims. He also has now provided the missing statements. (Dkt. No. 21.)

Because it appears that Johnson acted with sufficient diligence in attempting to comply with the court's prior order, Johnson's motion for reconsideration (Dkt. No. 21) is GRANTED. The Clerk is directed to RE-OPEN this case on the active docket of the court. By separate order, Johnson will be provided with a consent-to-fee form and directed to return it.

Additionally, when the case previously was dismissed, Johnson's motion for leave to proceed *in forma pauperis* and his motion for summary judgment were pending. The Clerk is DIRECTED to alter the docket to reflect that the *in forma pauperis* motion (Dkt. No. 6) remains pending. The motion for summary judgment was premature because no defendant has yet been

served or entered an appearance in this case. Accordingly, that motion (Dkt. No. 18) will be DENIED WITHOUT PREJUDICE as premature.

The Clerk is directed to provide a copy of this order to Johnson.

Entered: May 3, 2022.

/s/ Elizabeth K. Dillon

Elizabeth K. Dillon
United States District Judge